NEW YORK STATE
JOINT COMMISSION ON PUBLIC ETHICS

540 BROADWAY
ALBANY, NEW YORK 12207
www.jcope.ny.gov

PHONE: (518) 408-3976
FAX: (518) 408-3975

April 4, 2014

Via U.S. Mail & E-mail

Ronnie Pawelko
Counsel
NY Women's Equality Coalition

Dear Ms. Pawelko:

On October 23, 2013, the NY Women's Equality Coalition ("WEC") submitted an application to the Joint Commission on Public Ethics ("Commission") for an exemption from the Source of Funding Disclosure requirements contained in in Legislative Law Article one-A §§1-h(c)(4), 1-j(c)(4) and 19 NYCRR Part 938. The Commission considered WEC's application at its January 28, 2014 meeting. As it received the votes of only three Commissioners, the application was denied. Pursuant to 19 NYCRR Part 938.5(d), the Commission, by this letter, sets forth reasons and bases for the denial of the application.

By way of background, the Public Integrity Reform Act of 2011 ("PIRA") (Chapter 399, Laws of 2011) amended Legislative Law article one-A by enacting unprecedented disclosure requirements that, through increased transparency, better inform the public about efforts to influence governmental decision-making. The Source of Funding Disclosure provisions of the Legislative Law require lobbyists who lobby on their own behalf and clients of lobbyists, who devote substantial resources to lobbying activity in New York State, to make publicly available each source of funding over $5,000 for such lobbying. The purpose of these statutory provisions is clear: to provide the public with increased transparency and important information about those who seek to influence governmental decision-making.

The statute and the regulations permit entities to apply for an exemption from these disclosure requirements. WEC sought an exemption pursuant to 19 NYCRR Part 938.4(b), which is available for organizations that have exempt status under Section 501(c)(4) of the Internal Revenue Code of the United States. Under both the statutory and regulatory provisions, WEC was required to show that its "primary activities involve areas of public concern that create

a substantial likelihood that disclosure of its [sources of funding] will cause harm, threats, harassment or reprisals to the [sources of funding] or individuals or property affiliated with the [sources of funding]." 19 NYCRR Part 938.4(b); *see* also Legislative Law §§1-h(c)(4), 1-j(c)(4).

Pursuant to Executive Law §94(6), at least eight Commissioners must vote in favor of an application in order for the exemption to be granted. Here, WEC's application failed to garner the sufficient number of votes. In the view of the Commissioners who did not support the exemption request, WEC's application did not present sufficient evidence demonstrating that WEC's compliance with the disclosure requirements would create a "substantial likelihood" of harm to its sources of funding (including individuals and property associated with those sources). Rather, the evidence presented was too remote and speculative to establish a substantial likelihood of harm.

Sincerely,

Daniel J. Horwitz (on behalf of himself and the following Commissioners):

Hon. Joseph Covello
Mitra Hormozi
Gary J. Lavine
David Renzi
George Weissman

Statement in Opposition

We write to explain our dissent from the denial by the Joint Commission of Public Ethics of the applications of New York Women's Equality Coalition, Family Planning Advocates NYS, and the New York Civil Liberties Union for exemption from disclosing their sources of funding.

The Commissioners who did not support the exemption requests (the "Majority") explain the denials by stating that the applicants did not present sufficient evidence to demonstrate a "substantial likelihood" of harm to its sources of funding because such evidence was "too remote and speculative."

We observe first that there was no meaningful discussion by the Commission of the evidence proffered by the applicants. In fact, the Majority ignored a dissenter's request to consider the threats and acts of hostility directed at the officers, employees, volunteers and affiliates of the applicants in determining whether the required demonstration of "substantial likelihood of harm" had been met.

Most important, however, is the Majority's narrow interpretation of the governing statute which sets an impossible standard for any applicant to meet. By stating that the applicants' evidence is "too remote and speculative", the Majority, in effect, declares that only a showing of harm to the funding source can comply with the applicable standard. To require applicants to prove harm to its sources who to date have been unknown to those who would do them harm, is to require applicants to

do the impossible and to impute to the Legislature the intention of enacting a statutory standard that is meaningless. We construe the statute to require the Commission to examine the harm, threats, harassment or reprisals that have been directed to the applicant and its employees and affiliates and extrapolate from that whether there is a "substantial likelihood" that the applicant's source of funding will suffer similar acts. There can be no other reasonable construction. When so viewed, the present applications clearly meet the statutory standard and should be granted.

Such view is consistent with the exemption the Commission previously granted NARAL. The Majority has not explained, nor can it, why these very similar applications have failed and NARAL's did not.

Finally, we are mindful of the legislative declaration in Section 1-a of increased transparency in the governmental process, but we cannot completely ignore, as does the Majority, the other legislative mandate to grant exemptions where appropriate.

Paul Casteliero
Marvin E. Jacob
Hon. Renee R. Roth
Commissioners